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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,243	06/27/2001	Victor Duer	12085/1	1410

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EXAMINER
PRATT, HELEN F

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 03/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/831,243	Applicant(s) DUER, VICTOR	
	Examiner Helen F. Pratt	Art Unit 1761	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-12 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 is indefinite in the use of the phrase "formulated as a function of animal species". It is not known what is meant by this phrase.

Regarding claim 7, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also, the claim contains an incorrect chemical formula for sodium hydrochloride.

Claim 8 is indefinite in the use of the phrase "mainly biotin and pyridoxine hydrochloride. It is not known whether other B vitamins are required or not.

Claims 10 and 12 are indefinite in the use of the phrase "preferably". It is not known whether these temperatures are required or not.

Claim Objections

Claims 10-12 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim (MDC) cannot depend on a MDC. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aktiebolag et al. (EP 0682 874) in view of Nagashima et al. (6,262,592), and Pierre et al.

Aktiebolag et al. disclose a method of making an animal feed pellet by coating the pellet with a fatty component which contains a biologically active ingredient which can be a vitamin and an enzyme (abstract and page 2, lines 18-30, page 6, lines 43-56). Claim 1 differs from the reference in particular temperature, which the pellets are to be sprayed with and in the use of a vitamin premix also containing the phytase enzyme. The reference recognizes that bioactive ingredients are sensitive to the heat and The reference discloses that the pellets were taken warm from the production line and coated at temperatures from 45 to 65 C. (page 3, lines 54-58, page 2, lines 18-30). As the reference recognizes that too high a processing temperature is detrimental to bioactive ingredients such as vitamins and enzymes, it would have been within the skill of the ordinary worker to cool the pellets to below 55 degrees C or whatever

temperature which would not affect the activity of the bioactive ingredients. Claim 1 also differs from the reference in the use of a phytase enzyme. Nagashima et al. disclose that it is known to use phytase in an animal feed (abstract). Spraying of amino acid containing coating is disclosed by Pierre et al. (abstract and col. 9, lines 1-9). Therefore, it would have been obvious to use the phytase enzyme as the enzyme of Aktiebolag et al. in a coating since Aktiebolag et al. recognize that the heat from pelletizing animal feed could cause decomposition of the enzyme and therefore teaches putting the enzyme in the coating phase of the process to protect it from degradation and it would have been obvious to spray a coating onto the pellet as taught by Pierre et al. in the process of Aktiebolag.

Claim 2 requires that the vitamin premix is formulated as a function of animal species. As above, this limitation is not understood. However, if the phrase is taken to mean that the composition is for animals, this is disclosed as above. Therefore, it would have been obvious to use the claimed composition for animals.

Claim 3 requires that the feed pellets pass a rotor-spray/rotor nozzle when being sprayed. However, this is an apparatus limitation in a method claim and is not given weight. Aktiebolag et al. disclose coating the vitamin pellet with a coating (abstract). Therefore, it would have been obvious to coat using a suitable apparatus.

Claim 5 further requires amino acids dissolved in the vitamin premix. Pierre et al. disclose that it is known to polish a base granulate with lysine hydrochloride. Lysine is an amino acid (col. 1, lines 50-65 and col. 2, lines 1-9). The lysine containing coating can be sprayed onto the granulates (col. 2, lines 58-60). Therefore, it would have been

obvious to spray an amino acid such as lysine on a granule or pellet and to dissolve vitamins in the mixture since the vitamins can also be used in a coating as in Aktiebolag.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-3, 5 above, and further in view of Barendse et al.

Claim 6 requires digestibility-promoting enzymes dissolved in the vitamin premix. Barendse et al. disclose that it is know to use phytase, endo-sylanas and B-glucanase in a granule. As it is known to use enzymes in a coating as shown by Aktiebolag, it would have been obvious to use other enzymes in a coating in the process of the combined references.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-3, 5, 6 above, and further in view of Moechnig et al. and Lavery. .

Claim 4 further requires spraying with a solution of minerals. Moechnig et al. disclose coating a granule with a trace mineral base mix (abstract and drawing). Lavery discloses feed pellets coated with a gel containing vitamins and minerals (abstract and col. 3, lines 5-14). The claim differs from the references in the step of spraying the pellet with the mineral base. However, no patentable distinction is seen at this time in spraying and mixing absent anything new or unobvious. Also, Pierre et al. disclose

spraying a coating onto a granulate (abstract). Therefore, it would have been obvious to mix or spray the minerals onto the pellets.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-3, 5, 6 above, and further in view of Flanagan et al. and Ratz nee Simonek et al. (4,883,907).

Claim 7 is to a premix whose limitations have been shown above except for the Propylene glycol (PG) and EDTA and other vitamins and sodium hydrochloride. Flanagan et al. disclose coating a tablet with gellan, PG and EDTA (page 12 para. (0141) . Also, Ratz et al. '907 disclose various vitamins in a premix that can be added with PG to a feed mix (abstract and col. 5, lines 20-41). Nothing new or unobvious is seen in the order of adding the vitamins, absent unobvious results or in the addition of salt, which is a well known essential nutrient. Therefore, it would have been obvious to ad known nutrients to the composition.

Claim 10 ~~to 12 are~~ is to adding fat soluble vitamins in the oil phase and to mixing at from 50 to 70, and claim 11 to adding oil and water phase are mixed at particular temperatures and claim 12 that phytase enzyme is added at a particular temperature. However, nothing new is seen in adding fat soluble vitamins to the oil phase so they can be solubilized or to mixing the phases together. The limitations as to the phytase enzyme have been discussed above and are obvious for those reasons.

Allowable Subject Matter

Claims 8 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Also, claims 10-12 would be allowable if the 112 rejections were overcome and the multiple dependency corrected and the claims made dependent on claims 8 and 9 and further including the limitations of claim 7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 3-5-03

H. Pratt
HELEN PRATT
PRIMARY EXAMINER